

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

MELISA MAYS, *et al.*,
Plaintiffs,

No. 15-cv-14002

HON. JOHN CORBETT
O'MEARA

v

GOVERNOR RICK SNYDER, in
his official capacity, *et al.*,
Defendants.

**MOTION TO WITHDRAW AS
COUNSEL**

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MOTION TO WITHDRAW AS COUNSEL

Richard Kuhl, Margaret A. Bettenhausen, and Nathan Gambill,
Assistant Attorneys General, Michigan Department of Attorney

General,¹ move to withdraw as counsel for Defendants Daniel Wyant, Liane Shekter Smith, Adam Rosenthal, Stephen Busch, Patrick Cook, Michael Prysby, and Bradley Wurfel (MDEQ Defendants) for the following reasons:

1. A potential conflict of interest has recently developed between the MDEQ Defendants, and Defendants Governor Snyder and the State of Michigan. This potential conflict became apparent in the last 7-10 days, and is reflected in various news reports.²

2. As a result of the recent change in circumstances, representation of both the Governor and the State, and the MDEQ Defendants may be directly adverse to the other client or materially

¹ Attorney General Bill Schuette's name appeared *pro forma* in the signature block in all previous filings in this matter. It will not be included in the future because a conflict wall has been established within the Department of Attorney General, as a result of the Attorney General's independent investigation of the issues surrounding Flint's water supply. Attorney General Schuette has not and will not be involved in representing any party to this action.

² See, e.g., <http://www.freep.com/story/news/local/michigan/flint-water-crisis/2016/01/26/new-deq-chart-sheds-light-flint-water-response/79339270/>;
<http://www.freep.com/story/news/local/michigan/flint-water-crisis/2016/01/22/any-state-firings-flint-mistakes-could-take-months/79183228/>

limited by the attorneys' responsibilities to the other client. Michigan Rules of Professional Conduct 1.7(a) & (b).

3. Good cause exists for withdrawal under the Mich. R. Prof'l Conduct 1.16(b).

4. Because the Department of Attorney General's principal duty is to represent the State and Governor, Mich. Comp. Laws § 14.28, Assistant Attorneys General Richard Kuhl, Margaret A. Bettenhausen, and Nathan Gambill request approval from the Court to continue representing Governor Snyder and the State.

5. The request for approval to withdraw from the representation of the MDEQ Defendants and continue to represent the State and the Governor is not based on any judgment about the potential merits of the alleged claims against any of the defendants.

6. As required under Mich. R. Prof'l Conduct 1.9(a), the MDEQ Defendants, as former clients, would have to consent to such representation. Therefore, attorneys Kuhl, Bettenhausen, and Gambill will seek conflict waivers from the MDEQ Defendants after they are represented by new counsel.

7. Withdrawal of representation will not adversely affect the MDEQ Defendants. These proceedings are still at the early stages, and the MDEQ Defendants will be provided the opportunity to be represented by new counsel, paid for by the State.

8. This motion is based on those rules and the other grounds set forth in the accompanying brief.

Respectfully submitted,

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Dated: February 2, 2016

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**BRIEF IN SUPPORT OF
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**BRIEF IN SUPPORT OF MOTION
TO WITHDRAW AS COUNSEL**

Local Rule of the United States District Court for the Eastern District of Michigan 83.25(2) states that an attorney may withdraw as counsel only upon order of this Court. In addition, the Michigan Rules of Professional Conduct apply to the attorneys who practice in this Court. *Id.* at 83.22(b).

Mich. R. of Prof'l Conduct 1.16 sets forth the grounds and procedures for withdrawing from representation of a client. It provides, in relevant part, that a "lawyer may withdraw from representing a client if withdrawal can be accomplished without material adverse effect on the interests of the client" or if "other good cause for withdrawal exists." *Id.*

Good cause for withdrawal exists because a potential conflict between defendants Daniel Wyant, Liane Shekter Smith, Adam Rosenthal, Stephen Busch, Patrick Cook, Michael Prysby, and Bradley Wurfel (MDEQ Defendants), and defendants Governor Rick Snyder and the State of Michigan has recently arisen. This potential conflict is a matter of public record as reflected in various news reports.¹

Due to this potential conflict, the Assistant Attorneys General that have appeared in this case request to withdraw as counsel for the MDEQ Defendants, but to remain as counsel for the State and the

¹ See, e.g., <http://www.freep.com/story/news/local/michigan/flint-water-crisis/2016/01/26/new-deq-chart-sheds-light-flint-water-response/79339270/>; <http://www.freep.com/story/news/local/michigan/flint-water-crisis/2016/01/22/any-state-firings-flint-mistakes-could-take-months/79183228/>

Governor. This request does not reflect a judgment about the relative merits of the alleged claims against the various defendants. Instead, this request is based on the Department of Attorney General's primary function to serve as counsel the State and its agencies. Mich. Comp. Laws §14.28.

The MDEQ Defendants will not be adversely affected as this motion comes early in the proceedings – responsive pleadings have not been filed and no scheduling order has been entered. The Department of Attorney General sought, and was granted, an extension of time to file responsive pleadings, and is filing this motion as soon as possible after it determined that a potential conflict existed.

In addition, all reasonable efforts are being made to avoid any impacts to the MDEQ Defendants. The MDEQ Defendants will be provided the opportunity to be represented by new counsel, paid for by the State, and substitute counsel should have adequate opportunity to consult with MDEQ Defendants and determine appropriate actions to take in this action.

Mich. R. of Prof'l Conduct 1.9(a) prohibits a lawyer from representing a client "in the same or a substantially related matter in

which that person's interests are materially adverse to the interest of [a] former client *unless the former client consents after consultation.*"

(Emphasis added.)

To comply with Rule 1.9(a) and continue representing the Governor and the State, to whom their primary duties are owed under law, Mich. Comp. Laws § 14.28, the moving attorneys will seek conflict of interest waivers from each of the individual MDEQ Defendants after they have had an opportunity to consult with their new attorneys.

For the foregoing reasons, undersigned counsel respectfully request this Court grant the following relief:

A. Allow Assistant Attorneys General Richard Kuhl, Margaret A. Bettenhausen, and Nathan Gambill to withdraw as counsel for Defendants Daniel Wyant, Liane Shekter Smith, Adam Rosenthal, Stephen Busch, Patrick Cook, Michael Prysby, and Bradley Wurfel;

B. Allow Assistant Attorneys General Richard Kuhl, Margaret A. Bettenhausen, and Nathan Gambill to continue representing Defendants Governor Rick Snyder and the State of Michigan, contingent on obtaining conflict of interest waivers from each of the individual MDEQ Defendants; and

C. Grant such other relief as the Court deems necessary or appropriate.

Respectfully submitted,

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Dated: February 2, 2016

CERTIFICATE OF SERVICE

I hereby certify that on February 2, 2016, I electronically filed the above document(s) with the Clerk of the Court using the ECF System, which will provide electronic copies to counsel of record.

Respectfully submitted,

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